

KAMALA D. HARRIS
Attorney General of California
GRETCHEN K. BUECHSENSCHUETZ
Supervising Deputy Attorney General
TODD GRABARSKY
Deputy Attorney General
State Bar No. 286999
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2112
Fax: (213) 897-7604
E-mail: Todd.Grabarsky@doj.ca.gov
*Attorneys for Defendants J. Beard,
P. Cholakyan, S. Kernan, and T. Palmer*

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

MICHAEL GRIMES,

Plaintiff,

v.

J. BEARD, et al.,

Defendants.

EDCV15-2267 ODW (AGR)

**NOTICE OF NON-OPPOSITION
TO PLAINTIFF'S MOTION TO
STAY OF PROCEEDINGS**

Judge: The Honorable Alicia G.
Rosenberg
Action Filed: November 3, 2015

Defendants J. Beard, P. Cholakyan, S. Kernan,¹ and T. Palmer ("Defendants") respectfully submit this Notice of Non-Opposition to Plaintiff Michael Grimes's ("Plaintiff") motion seeking a stay of proceedings.

On June 17, 2016, the Magistrate Judge filed a Report and Recommendation recommending that the complaint be dismissed with leave to amend. (ECF No. 31.) The Court explained that Plaintiff's claims were barred by the favorable termination rule under *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994), and *Edwards v.*

¹ As the official successor of named defendant J. Beard, Defendant S. Kernan has been substituted in his official capacity for Defendant Beard in his official capacity pursuant to Federal Rule of Civil Procedure 25(d).

1 *Balisok*, 520 U.S. 641, 648 (1997) and that Plaintiff failed to allege sufficient facts
2 to allege plausible Eighth Amendment and due process claims. (*Id.*) On June 23,
3 2016, Plaintiff filed a “Motion for Clarification” (ECF No. 33), which the Court
4 construed as objections to the Report and Recommendation (ECF No. 34.)

5 On July 11, 2016, Plaintiff filed a “Motion to Dismiss Case Without
6 Prejudice,” in which he explained that he intends to pursue writ relief in a state
7 court, presumably to challenge his disciplinary guilty finding for failing to provide
8 a urine sample as part of the Mandatory Random Urinalysis Program, which
9 resulted in a loss of good-time credits. (ECF No. 35.) On July 21, 2016, the Court
10 construed that Motion as further objections to the Report and Recommendation and
11 as a “motion seeking a stay rather than dismissal.” (ECF No. 36.)²

12 In light of the Court’s power to stay the present civil action until Plaintiff’s
13 writ challenge to his loss of good-time credits, *Wallace v. Kato*, 549 U.S. 384, 393–
14 94 (2007) (citing *Heck*, 512 U.S. at 484, 487–88; *Edwards*, 520 U.S. at 649),
15 Defendants hereby inform the Court that they do not oppose the construed motion
16 to stay of proceedings so that Plaintiff may pursue writ relief in a state court.

17 Dated: July 22, 2016

Respectfully submitted,

18
19 KAMALA D. HARRIS
Attorney General of California
20 GRETCHEN K. BUECHSENSCHUETZ
Supervising Deputy Attorney General

21
22 /s/ Todd Grabarsky
TODD GRABARSKY
23 Deputy Attorney General
24 Attorneys for Defendants J. Beard,
P. Cholakyan, S. Kernan, and
25 T. Palmer

26 LA2015604306

27 ² Also on July 21, 2016, the Magistrate Judge issued an Amended Report and
28 Recommendation, which also recommended dismissal of Plaintiff’s complaint.
(ECF No. 37.)

CERTIFICATE OF SERVICE

Case Name: Grimes v. Beard, et al.

No. EDCV15-2267 ODW (AGR)

I hereby certify that on July 22, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF NON-OPPOSITION TO PLAINTIFF'S MOTION TO STAY OF PROCEEDINGS

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On July 22, 2016, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Michael Grimes
V-38005
California Institution for Men
Housing C-Yard / Alpine 202L
P.O. Box 500
Chino, CA 91708-0500
In Pro Per
V38005

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 22, 2016, at Los Angeles, California.

D. Arciniega
Declarant

/s/ D. Arciniega
Signature